IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.12068 of 1997

Date of Decision: November 28, 2007

Subhash Chander .....Petitioner

Versus

National Fertilizers Limited & others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Vivek Sharma, Advocate for the petitioner.

Mr.Nilesh Bhardwaj, Advocate for
Mr.Ashok Aggarwal, Senior Advocate
for respondent No.1.

Mr.Narinder Sura, AAG Haryana
for respondents No.2 and 3.

Mr.RK Malik, Advocate for respondent No.4.

S. D. ANAND, J.

1. The petitioner completed his three years' diploma in Civil Engineering in the year 1986 and registered his name with the Employment Exchange on 29.12.1987. On being sponsored by the Employment Exchange for apprenticeship, he joined apprenticeship in the National Fertilizer Limited (hereinafter referred as “the NFL”) - respondent No.1 on 22.9.1992 and completed one year apprenticeship on 29.3.1993. In the meantime, he had been renewing his registration with the Employment

Exchange. In the year 1995, certain posts of Overseers-cum-Estimators, Grade-III became available in the NFL. Vide letter dated 18.11.1995 (P6), the NFL requested the employment exchange to sponsor the name of four apprentices who had completed their apprenticeship training under the Apprenticeship Act, 1961. However, the name of only one candidate i.e. One Karambir son of Naki Ram (who belonged to the reserve category of Scheduled castes) was sponsored by the employment exchange. NFL again addressed the Employment exchange on 3.2.1996 requesting the latter to sponsor the names of other candidates as well to enable the former to proceed with the process of selection/appointment to the posts of Overseers-cum-Estimators, Grade-III. In response thereto, the Employment Exchange recommended the names of two candidates. i.e. S/Shri Jagdish Chander and Sushil Kumar. The last indicated is respondent No.4 to the present petition. Both of them i.e. Jagdish Chander and Sushil Kumar belong to the category of OBC. This time, too, the name of the petitioner was not sponsored by the Employment Exchange.

2. It is to the notice of the petitioner otherwise that, in the course of interview for the two posts aforementioned held in the month of June/July, 1997, S/Shri Karambir Singh and Sushil Kumar (the former being a scheduled castes candidate and the other being a candidate belonging to the category of OBC) were appointed to the post of Overseer-cum-Estimators Grade-III.

3. The essential grievance of the petitioner is two-fold. He calls into question the validity of the non-forwarding of his name by the Employment Exchange, thereby disabling the NFL from considering his candidature. The other grievance pertains to the fact that Sushil Kumar, a

member of the OBC category, has been appointed on the other post which was meant for being filled up by a general category candidate.

4. Before filing of the writ petition, the petitioner filed a Civil Suit in the Court at Panipat for a declaration qua the invalidation of the appointments made by the NFL to the posts of Overseer-cum-Estimators. Also sought, in the course of the relief clause, was the restraint of the NFL for not allowing the private respondents to join their duties. In the counter filed by the NFL, it was averred that the error was on the part of the Employment Exchange, which did not recommend the name of the petitioner inspite of various letters addressed by it (NFL). A preliminary objection was also taken by the NFL to the maintainability of the suit on the plea that the Employment Exchange had not been impleaded as a party. In the light of that preliminary objection, the petitioner filed a plea for the withdrawal of the Civil Suit and for the leave of that Court to file a writ plea after impleading the Employment Exchange as a party. It was in the light of the application and statement made by the petitioner that the suit aforesaid was dismissed as withdrawn.

5. In the present writ petition, the petitioner applied for the issue of a writ in the nature of mandamus directing respondent No.3 to recommend his name to the NFL. Also applied for was a direction to the NFL to consider and appoint the petitioner to the post Overseer-cum-Estimator with all consequential benefits. In the alternative, the petitioner sought a writ in the nature of certiorari quashing the appointment of respondent No.4 who belongs to the category of OBC and has been appointed against the post meant for a general category candidate.

6. Respondent No.1 – NFL conceded having requested the

Employment Exchange to sponsor the names of eligible candidates. While denying that the number of posts to be filled up was four, it averred that there were only two posts to be filled up out of which one was reserved for a scheduled castes candidate and the other was meant for a general category candidate. It conceded that respondent No.4, who was an OBC, had been appointed against the post meant for general category. However, it re-iterated the correctness of that appointment in terms of the Government instructions in the context. It was pleaded that the petitioner could not be considered as his name was not sponsored by the Employment Exchange.

7. Respondents No.2 and 3, in the course of a joint written statement, conceded having received requisition for sponsoring of candidates for two vacancies out of which one was meant for a general category and the other was for a scheduled castes candidate. It was averred that though the vacancies were circulated by the State Employment Exchange to all Employment Exchanges to send the particulars of eligible applicants for onward transmission to the NFL-respondent No.1, the name of the petitioner (who stood registered in the Employment Exchange, Gharounda) could not be sponsored as his name escaped notice of the Employment Officer, Gharounda, at the time of earmarking of applicants against the vacancies in question and, thus, his particulars were not conveyed to the State Employment Exchange, Haryana at Chandigarh for onward transmission to respondent No.1. The further averment in the context is that "it may be pertinent to mention here that the petitioner did not personally contact the Employment Exchange, Gharounda at any time nor made any representation at any stage pointing out the omission on the part of Employment Exchange so that remedial action could be taken. The

omission has come to notice only on receipt of present writ petition when the Director of Employment, Haryana (respondent No.2) ordered an enquiry on 24.9.97 by the Divisional Employment Officer, Ambala which has revealed the accidental omission on the part of Employment Officer, Gharounda and necessary disciplinary action is being recommended to Government separately against the defaulting officer." Yet another averment made is that "there is no obligation on the part of an employer to ensure that the trainee is sponsored by the Employment Exchange as per judgment delivered by the Hon'ble Supreme Court reported in AIR 1995, SC 1115-U.P. State Road Transport Corporation and another Versus U.P.Parivahan Nigam Shiskukh Berozgar Sangh and Others (Civil Appeal No.4347-54 of 1990)" That the employer is at liberty to absorb/employ a trainee in regular employment after successful completion of training without sponsorship by the Employment Exchange."

8. Respondent No.4 challenged the maintainability of the writ petition by averring that the petitioner had neither applied nor was he granted liberty by the Civil Court to file another litigation on the same cause of action.

9. It may be noticed, at the very outset, that the petitioner is guilty of having made a factual wrong averment to the effect that he had been given liberty by the Civil Court to file a fresh suit on the same cause of action. Annexure P14 is the statement dated 18.03.1997 by him and also the order passed by Additional Civil Judge (Senior Division) for dismissal of the suit as withdrawn. The petitioner made the following statement in the course thereof:

"Stated that I do not want to pursue the present suit

because the defendant in it is written statement has stated that they had sent requisition to the concerned Employment Exchange and Employment Department of Haryana but they did not send my name for the above mentioned post. Therefore, I want to take action against above mentioned department in the High Court. Therefore, my present suit may kindly be ordered to be filed."

10. On the basis thereof, the Civil Court passed the following order:

"File taken up today on the application moved on behalf of the plaintiff. In view of the statement of the plaintiff recorded separately, the suit of the plaintiff is hereby dismissed as withdrawn. No order as to costs. File be consigned."

11. As would be apparent from the above quoted material obtaining on the file, the petitioner never ever applied for the leave of the Court to withdraw that suit with liberty to file a fresh one on the same cause of action. All that he stated in the course of the statement was that he wanted to withdraw the suit in order to be able to take action against the Employment Exchange Department (for not having sponsored his name) in the High Court. In the light thereof, the Civil Court passed an order for the simpliciter withdrawal of the suit. The petitioner has, thus, not come to the Court with clean hands.

12. There is a precise averment made by respondents No.2 and 3 that the NFL – respondent No.1 could well have considered the petitioner for appointment to the post of Overseer-cum-Estimator even if his name had not been sponsored by the Employment Exchange. On the own

showing of the petitioner in the course of the writ petition, the holding of the interview in the indicated months was to his notice. It is not the averment that he contacted the NFL for being allowed to appear at the interview or that his request in that behalf was declined. In that view of things, he cannot be heard to make a grievance of the fact that his name was not considered for appointment.

13. Insofar as the grievance with regard to the appointment of Sushil Kumar, an OBC against the post meant for a general category candidate, it is plainly mis-conceived. There is law that a general category candidate cannot be appointed against a reserved post but the converse is not true. The law of the land is to the effect that a reserved category candidate might well be appointed on merits to a post meant for a general category candidate, if the former is higher in merit qua the latter.

14. As apparent from the file, this Court called upon the official respondents No.2 and 3 to indicate what action, if any, had been initiated against the Employment Officer who did not sponsor the name of the petitioner. The respondents have placed on file material to the effect that the concerned Employment Officer was exonerated of the charge. In the light thereof, I do not propose pursuing that aspect any further.

15. As a result of the foregoing discussion, the petition is held to be completely bereft of merit.

16. Dismissed.

(S. D. ANAND)
JUDGE

November 28, 2007
SRM

Note: Whether referred to reporter ? Yes/No `